

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN  
GREEN BAY DIVISION

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UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	Case No. 19-CR-67
	)	Green Bay, Wisconsin
vs.	)	
	)	May 22, 2020
XENGXAI YANG,	)	10:13 a.m.
	)	
Defendant.	)	
	)	

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**TRANSCRIPT OF TELEPHONE STATUS CONFERENCE**  
BEFORE THE HONORABLE WILLIAM C. GRIESBACH  
UNITED STATES SENIOR DISTRICT JUDGE

APPEARANCES:

For the Plaintiff

UNITED STATES OF AMERICA: United States Department of  
Justice  
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For the Defendant

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TRANSCRIPT OF PROCEEDINGS

Transcribed From Audio Recording

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THE COURT: Case No. 19-CR-67. This matter is on the calendar today for a counsel only status conference more or less. Can we have the appearances beginning with the Government.

MR. MAIER: Morning, Your Honor. Andrew Maier appears for the United States.

THE COURT: Good morning, Mr. Maier.

MR. PHILLIP: Good morning, Your Honor. Tom Phillip appears on behalf of Mr. Yang.

THE COURT: Good morning, Mr. Phillip.

MR. PHILLIP: Your Honor, the history of the case goes back to Mr. Yang initially was represented by retained counsel. That attorney and Mr. Yang entered a not guilty by reason of mental disease or defect plea, and the Court ordered an examination. That examination did not support the plea, and so Mr. Yang entered a guilty plea by written plea agreement.

After the entry of the plea, Mr. Yang then filed a pro se motion for new counsel and to withdraw his plea. The Court granted the motion for new counsel and held open the motion to withdraw the plea, so then I was appointed and I picked up the case in the middle of February of this year.

I filed two motions -- Well, one was a letter asking

1 to clarify the status of the case, and I filed a motion to  
2 adjourn the sentencing and schedule a status conference. The  
3 Court granted the motion to postpone the sentencing and put this  
4 hearing on today instead. And what I've been doing during the  
5 time since I've been appointed is try to see if there are any  
6 grounds to withdraw the plea or to try and reinstate the not  
7 guilty by reason of mental disease or defect plea.

8 Towards both of those ends, I retained a psychologist  
9 to see Mr. Yang, and I had hoped to be able to have a report and  
10 tell the Court which way I would go by today. Unfortunately  
11 because of the Coronavirus Pandemic, my progress has been much  
12 slower than anticipated.

13 It became because of the jail restrictions because of  
14 the Coronavirus, it became difficult, first, to get the doctor  
15 to see Mr. Yang and, second, for him to be able to do his work.  
16 The doctor when he does a neuropsychiatric exam, that usually  
17 takes between six or eight hours of in-person interviewing and  
18 testing, and the testing includes both paper tests and tests  
19 where the subject manipulates objects, sorts things, tests like  
20 that.

21 So again that was much more difficult than usual to  
22 accomplish. The doctor was having to do this in 60 or 90-minute  
23 chunks rather than in one or two long interviews so it has just  
24 been inefficient. I am not by the way complaining about the  
25 jail. I think they have been responsible in their duties. I am

1 not complaining about the doctor. He's been trying to do his  
2 best under the circumstances but, in essence, everything was  
3 taking longer than expected.

4 The doctor now is finished with his interviews and  
5 testing and is tabulating his results and writing a report. I  
6 expect to have that in the near future. I don't have a date  
7 certain that I can tell the Court that I'll have the report by.  
8 The doctor's report and conclusions will then obviously help me  
9 decide what to do next.

10 And so what I would propose is that the Court schedule  
11 this case again for a status conference in, approximately, 30 or  
12 45 days. That should give me the time for the doctor to finish  
13 his report and then for me to confer with Mr. Yang and decide  
14 what if anything we should do next.

15 THE COURT: Mr. Maier, do you have any objection to  
16 that proposal?

17 MR. MAIER: I don't, Your Honor. Thank you.

18 THE COURT: It strikes me as reasonable. And  
19 unfortunately given the current circumstances under which we're  
20 all trying to operate, the delay is understandable. Let's look  
21 at our calendars, and I'll try and put this on for 30 to 45 days  
22 away. Let's see where -- We're really looking toward late June  
23 it sounds like.

24 MR. PHILLIP: Yes.

25 THE COURT: How about -- are you -- Are you in front

1 of me at all on June 29th or 30th?

2 MR. PHILLIP: No, but I am available all of those  
3 days.

4 THE COURT: How about the -- How about on June 29th  
5 at 2:30 in the afternoon? This will be --

6 MR. MAIER: Status conference?

7 THE COURT: Unless Mr. Phillip, you decide not to take  
8 any action and you wish to schedule a sentencing, we'll make  
9 this a status conference. If in the meantime you conclude  
10 you're simply going to go to sentencing, contact the clerk, and  
11 we'll reschedule at that point.

12 MR. PHILLIP: I'll do my best to notify the Court and  
13 parties in advance if I'm able of which way we might go. But  
14 yes, the June 29th for a status I think would be a good idea.  
15 Thank you.

16 THE COURT: Anything further we can do today?

17 MR. MAIER: I don't believe so.

18 MR. PHILLIP: No. Thank you.

19 THE COURT: Very well. Thank you all. Good-by  
20 everyone.

21 (Whereupon proceeding was concluded.)  
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C E R T I F I C A T E

I, SUSAN ARMBRUSTER, RMR, Official Court Reporter and Transcriptionist for the United States District Court for the Eastern District of Wisconsin, do hereby certify that the foregoing pages are a true and accurate transcription of the audio file provided in the aforementioned matter to the best of my skill and ability.

Signed and Certified November 19, 2021.

/s/Susan Armbruster

Susan Armbruster

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